

COMMUNITY AFFAIRS

Division Of Codes And Standards

Hotel and Multiple Dwellings; State Housing Code; Rooming and Boarding Homes

Maintenance of Housing Free of Existing Lead Hazards

Proposed Amendments: N.J.A.C. 5:10 1.2 and 6.6, 5:27-4.10, and 5:28-2.1

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-437.6, N.J.S.A. 52:27D-436 and 55:13A-7, 55:13B-4

Calendar: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-

Submit written comments by July 14, 2005 to:

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SUSAN BASS LEVIN, Commissioner

Summary

These amendments are being proposed in response to comments on the proposal that appeared in the May 3, 2004 *New Jersey Register* on the lead-safe maintenance of multi-family housing. The Department is proposing these sections of the rules because the content of the modifications is such that further public comment is required and,

therefore, the proposed changes could not be made upon adoption. The section that sets forth requirements for soil (N.J.A.C. 5:10-6.6(j)) is being re-proposed, because the Department had reserved this section in the Notice of Adoption (___NJR___).

The proposed amendments are as follows:

1. At N.J.A.C. 5:10-1.12(h) and 6.6(a), exemptions have been added for housing that is restricted for persons with disabilities and retirement communities/housing for seniors, provided that children are not expected to reside there. These changes will give New Jersey the same exceptions as those contained in Federal law (24, Subpart B – General Lead-Based Paint Requirements and Definitions for All Programs, CFR 35.110, Definitions.)
2. At N.J.A.C. 5:10-6.6(c), language has been added to specify that, after performing standard treatments that disturb 2 square feet or more in any one interior room space, or ten percent or more of the total surface area of an interior component with a small surface area of paint, maintenance staff must perform dust wipe testing, as required by Federal law for safe work practices (24 CFR, Subpart R – Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities, CFR 35.1350, Safe work practices).
3. N.J.A.C. 5:10-6.6(d) clarifies that, when maintenance staff are required to perform dust wipe testing following ongoing evaluation and maintenance, a certified firm is not required. This section also proposes provisions that would require staff to perform dust wipe testing after 20 consecutive jobs. 95% of the tests conducted must be in compliance with the clearance levels contained in N.J.A.C. 5:17. If this percentage is met, staff will be required to perform dust

- wipe testing after 5% of all jobs, and the results will be ordered on a random basis. If the 95% percentage is not met, staff will be required to perform dust wipe testing after all maintenance activities until the 95% level is reached.
4. At N.J.A.C. 5:10-6.6(h), the requirement that the landlord respond to a complaint by a tenant occupying a unit with a pregnant woman or child within three days is proposed to be changed to allow the landlord one week to correct the problem.
 5. At N.J.A.C. 5:10-6.6(j), the language has been amended to require that, if the soil has not been found to be lead-free, bare soil in excess of 9 square feet per property must be covered or access to these areas restricted, and play areas and walkways of any size must be covered (24 CFR, Subpart R, 35.1320).
 6. At N.J.A.C. 5:17-1.2, a definition has been added for “lead-free interior” to make clearer the distinction between a property that has been certified as “lead-free” in its entirety and one that is certified as having a lead-free interior only.

Social Impact

The proposed changes would further enhance the effectiveness of the Hotel and Multiple Dwelling Regulations, the State Housing Code, and the Regulations Governing rooming and Boarding Houses through enforcement of reasonable, yet effective, provisions to prevent childhood lead poisoning to the greatest extent possible through practice of primary prevention.

Economic Impact

As established in the May 3, 2004 proposal, owners would be required to maintain their properties in a lead-safe condition. The economic impact will vary based

on the condition of the property and the presence or absence of lead-based paint. The Department anticipates that the proposed amendments would have a positive economic impact, however, because children will be spared the burden of lead poisoning, resulting in reduced costs for special education and the criminal justice system, and improvements in their lifetime productivity and earning power.

Federal Standards Statement

The proposed amendments reference Federal standards to the greatest extent possible. The three primary sources used are the rules of the Environmental Protection Agency at 40 CFR 745, the HUD rules for Federally-owned or Federally-assisted housing at 24 CFR 35, and the HUD "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing." The requirements for the lead-safe maintenance of rental housing at N.J.A.C. 5:10-6.6 and N.J.A.C. 5:28-2.1 employ the same basic approach as the HUD requirements for Federally-owned or Federally-assisted housing. The language for housing exempted from the regulations and their underlying definitions are based on Federal law (24 CFR 35.110). Similarly, the thresholds for dust wipe testing following maintenance work were derived from the requirements for safe work practices in 24 CFR 35.1350. Finally, the boundaries set forth for bare soil were based on Federal requirements for lead in soil at 24 CFR 35.1320.

Jobs Impact

The Department does not expect that any jobs would be created or lost as a result of these proposed amendments.

Agriculture Industry Impact

The proposed amendments would not have an impact on the agricultural industry.

Regulatory Flexibility Analysis

These rules will apply to all owners of multiple dwellings, of rooming or boarding homes housing women and children and of emergency shelters for the homeless serving women and children for at least 30 days, that are likely to contain lead-based paint. They will also affect all persons engaged in lead-based paint remediation or remodeling and renovation in those buildings regardless of whether they are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules are intended to address a public health hazard, no less stringent rules can be applied to those who would qualify as "small businesses." The proposed amendments impose some additional recordkeeping requirements on building owners, as listed in N.J.A.C. 5:10-6.6(d), 5:27-4.10(d), and 5:28-2.1(d).

Smart Growth Impact

The proposed amendments and new rules would have no impact upon either the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in bold face thus; deletions indicated in brackets [thus]).

5:10-1.12 Certificate of inspection

(a)-(g) (No change.)

(h) Inspection fees shall be as follows:

1.- 3. (No change.)

4. In addition to the fee determined pursuant to paragraph 2. or 3. of this subsection, there shall be an additional inspection fee for multiple dwellings in the amount of \$20.00 per unit; provided, however, that this additional fee shall not be charged for units registered with the Bureau as being in any of the following categories:

i. – ii. (No change.)

iii. Seasonal rental units rented for less than six months' duration during each year; [or]

iv. Occupied by the owner of the dwelling unit as his or her residence[.] ;

or

v. Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit.

5. (No change.)

5:10-2.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Expected to reside” means there is actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

“Housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

5:10-6.6 Lead-safe maintenance requirements for multiple dwellings

(a) Each multiple dwelling, including all common areas, constructed before 1978, shall be subject to the requirements for lead-safe maintenance contained in this section. All such buildings shall undergo a combined inspection and risk assessment, and lead hazard control work in accordance with (b) below or shall comply with the requirements for standard treatments contained in (c) below. Following the performance of lead hazard control work or standard treatments, all buildings shall be subject to the requirements for on-going evaluation and maintenance contained in (d) below.

1. The requirements of this section shall not apply to:

i. – ii. (No change.)

iii. a dwelling unit that has been certified as having a lead-free interior in accordance with N.J.A.C. 5:17; [or]

iv. an owner-occupied dwelling unit[.] **; or**

v. housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit.

(b) (No change.)

(c) Standard Treatments: If the owner chooses not to have an inspection and risk assessment performed, as described in (b) above, the following lead hazard control requirements shall be followed for each dwelling unit and for all common areas. For each such building, the owner shall undertake periodic standard treatments as described below.

1. (No change.)

2. Standard treatments shall include the following:

i. – iii. (No change.)

iv. [Lead screening or clearance testing in accordance with N.J.A.C. 5:17 shall be performed] **Maintenance staff trained in accordance with N.J.A.C. 5:10-6.6(g) shall perform dust wipe sampling per N.J.A.C. 5:17, Table 9.1 for Single Surface Wipe Samples, if standard treatments are performed that disturb painted surfaces that total two square feet or more in any one interior room space, or ten percent or more of the total surface area of an interior component with a small surface area, including, but not limited to, window sills, baseboards or trim.** [and the] **The** results [of the screening or testing] shall not exceed the levels established in N.J.A.C. 5:17.

(d) On-Going Evaluation and Maintenance, as described below, shall be required for all buildings.

1. (No change.)

2. Deteriorated paint and the causes of deterioration shall be promptly and safely repaired in accordance with the requirements of (i) below.

i. – ii. (No change.)

iii. Dust wipe testing shall be performed in accordance with (1) – (4) below when the work is complete to ensure that the lead dust levels do not exceed the lead hazard levels established by N.J.A.C. 5:17. If the level exceeds the lead hazard level established by N.J.A.C. 5:17, cleaning and retesting shall be performed.

(1) Dust wipe sampling shall be performed following the first 20 maintenance activities. 95% of these samples taken shall meet the clearance levels set forth at N.J.A.C. 5:17.

(2) If the 95% accuracy level is reached, dust wipe sampling shall be performed following 5% of maintenance activities performed and samples shall be ordered on a random basis. A 95% accuracy level shall be maintained.

(3) If the accuracy level falls below 95% or if a 95% accuracy level was not achieved following the first 20 maintenance activities, dust wipe sampling shall be performed following all maintenance activities until the 95% accuracy level is reached.

(4) Property owners shall be required to maintain records of all dust wipe sampling performed.

(e) – (g) (No change.)

(h) Tenant notification and owner response:

1. (No change.)

2. Owners shall post a notice advising tenants to report deteriorated paint and shall respond to any reported problem within 30 days.

i. If an owner has received notice from a tenant that there is a pregnant woman or a child under the age of six years residing in the unit or, with regard to any problem reported in a common area, in the building, the owner shall [respond to any report of deteriorated paint within three days] **correct any conditions of deteriorated paint within one week of the tenant complaint.**

ii. (No change.)

(i) (No change.)

(j) [(Reserved)] **Bare soil in excess of 9 square feet per property shall be covered or access to these areas shall be restricted and bare soil in play areas or walkways of any size shall be covered unless that soil has been tested and has been found to be below the lead hazard level established by the U.S. Environmental Protection Agency (40 CFR 745);**

(k) (No change.)

CHAPTER 17 LEAD HAZARD EVALUATION AND ABATEMENT CODE

5:17-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Lead-free interior” means having no lead-based paint on any interior surface within a dwelling unit, common area or building. For the purpose of this definition, interior surface shall include any part of a door or window system other than the exterior casing.

5:17-3.6 Reports and certificates

(a) (No change.)

(b) If, upon performance of an inspection of all painted surfaces in accordance with this chapter, a unit or building is determined to be lead-free, the certified lead evaluation firm shall issue certification prescribed by the Bureau to the owner and, upon request, to any enforcing agency having jurisdiction to enforce lead safety standards at the premises.

The certified lead evaluation firm shall report issuance of all such certifications to the Department in such form and manner as may be prescribed by the Department.

1. – 2. (No change.)

(c) If, upon performance of an inspection and risk assessment in accordance with this chapter, a unit or building is determined to be free of lead-based paint hazards, the certified lead evaluation firm shall issue certification prescribed by the Bureau to the owner, and, upon request, to any enforcing agency having jurisdiction to enforce lead safety standards at the premises. **The certified lead evaluation firm shall report issuance of all such certifications to the Department in such form and manner as may be prescribed by the Department.**

1. (No change.)

(d) (No change.)

Appendix 3-A, Lead Screening

(No change.)

Appendix 3-B, Risk Assessment

(No change.)

CHAPTER 27

REGULATIONS GOVERNING ROOMING AND BOARDING HOUSES

5:27-4.10 Lead-safe maintenance requirements

(a) – (b) (No change.)

(c) Standard Treatments: If the owner chooses not to have an inspection and risk assessment performed, as described in (b) above, the following lead hazard control requirements shall be followed for each dwelling unit and for all common areas. For each such building, the owner shall undertake periodic standard treatments as described below.

1. (No change.)

3. Standard treatments shall include the following:

i. – iii. (No change.)

iv. [Lead screening or clearance testing in accordance with N.J.A.C. 5:17 shall be performed]. **Maintenance staff trained in accordance with N.J.A.C. 5:10-6.6(g) shall perform dust wipe sampling per N.J.A.C. 5:17, Table 9.1 for Single Surface Wipe Samples, if standard treatments are performed that disturb painted surfaces that total two square feet or more in any one interior room space, or ten percent or more of the total surface area of an interior component with a small surface area, including, but not limited to, window sills, baseboards or trim.**

[and the] **The** results [of the screening or testing] shall not exceed the levels established in N.J.A.C. 5:17.

(d) On-Going Evaluation and Maintenance, as described below, shall be required for all buildings.

1. (No change.)

2. Deteriorated paint and the causes of deterioration shall be promptly and safely repaired in accordance with the requirements of (i) below.

i. – ii. (No change.)

iii. Dust wipe testing shall be performed **in accordance with (1) – (4) below** when the work is complete to ensure that the lead dust levels do not exceed the lead hazard levels established by N.J.A.C. 5:17. If the level exceeds the lead hazard level established by N.J.A.C. 5:17, cleaning and retesting shall be performed.

(1) Dust wipe sampling shall be performed following the first 20 maintenance activities. 95% of these samples taken shall meet the clearance levels set forth at N.J.A.C. 5:17.

(2) If the 95% accuracy level is reached, dust wipe sampling shall be performed following 5% of maintenance activities performed and samples shall be ordered on a random basis. A 95% accuracy level shall be maintained.

(3) If the accuracy level falls below 95% or if a 95% accuracy level was not achieved following the first 20 maintenance activities, dust wipe sampling shall be performed following all maintenance activities until the 95% accuracy level is reached.

(4) Property owners shall be required to maintain records of all dust wipe sampling performed.

(e) – (g) (No change.)

(h) Tenant notification and owner response:

1. (No change.)

2. Owners shall post a notice advising tenants to report deteriorated paint and shall respond to any reported problem within 30 days.

i. If an owner has received notice from a tenant that there is a pregnant woman or a child under the age of six years residing in the unit or, with regard to any problem reported in a common area, in the building, the owner shall [respond to any report of deteriorated paint within three days] **correct any conditions of deteriorated paint within one week of the tenant complaint.**

ii. (No change.)

(i) (No change.)

(j) [(Reserved)] **Bare soil in excess of 9 square feet per property shall be covered or access to these areas shall be restricted and bare soil in play areas or walkways of any size shall be covered unless that soil has been tested and has been found to be below the lead hazard level established by the U.S. Environmental Protection Agency (40 CFR 745);**

(k) (No change.)

CHAPTER 28

NEW JERSEY STATE HOUSING CODE

SUBCHAPTER 2. LEAD HAZARD PREVENTION

5:28-2.1 Lead-safe maintenance requirements

(a) – (b) (No change.)

(c) Standard Treatments: If the owner chooses not to have an inspection and risk assessment performed, as described in (b) above, the following lead hazard control requirements shall be followed for each dwelling unit and for all common areas. For each such building, the owner shall undertake periodic standard treatments as described below.

1. (No change.)

4. Standard treatments shall include the following:

i. – iii. (No change.)

iv. [Lead screening or clearance testing in accordance with N.J.A.C. 5:17 shall be performed]. **Maintenance staff trained in accordance with N.J.A.C. 5:10-6.6(g) shall perform dust wipe sampling per N.J.A.C. 5:17, Table 9.1 for Single Surface Wipe Samples, if standard treatments are performed that disturb painted surfaces that total two square feet or more in any one interior room space, or ten percent or more of the total surface area of an interior component with a small surface area, including, but not limited to, window sills, baseboards or trim.** [and the] **The** results [of the screening or testing] shall not exceed the levels established in N.J.A.C. 5:17.

(d) On-Going Evaluation and Maintenance, as described below, shall be required for all buildings.

1. (No change.)

2. Deteriorated paint and the causes of deterioration shall be promptly and safely repaired in accordance with the requirements of (i) below.

i. – ii. (No change.)

iii. Dust wipe testing shall be performed **in accordance with (1) – (4) below** when the work is complete to ensure that the lead dust levels do not exceed the lead hazard levels established by N.J.A.C. 5:17. If the level exceeds the lead hazard level established by N.J.A.C. 5:17, cleaning and retesting shall be performed.

(1) Dust wipe sampling shall be performed following the first 20 maintenance activities. 95% of these samples taken shall meet the clearance levels set forth at N.J.A.C. 5:17.

(2) If the 95% accuracy level is reached, dust wipe sampling shall be performed following 5% of maintenance activities performed and samples shall be ordered on a random basis. A 95% accuracy level shall be maintained.

(3) If the accuracy level falls below 95% or if a 95% accuracy level was not achieved following the first 20 maintenance activities, dust wipe sampling shall be performed following all maintenance activities until the 95% accuracy level is reached.

(4) Property owners shall be required to maintain records of all dust wipe sampling performed.

(e) – (g) (No change.)

(h) Tenant notification and owner response:

1. (No change.)

2. Owners shall post a notice advising tenants to report deteriorated paint and shall respond to any reported problem within 30 days.

i. If an owner has received notice from a tenant that there is a pregnant woman or a child under the age of six years residing in the unit or, with regard to any problem reported in a common area, in the building, the owner shall [respond to any report of deteriorated paint within three days] **correct any conditions of deteriorated paint within one week of the tenant complaint.**

ii. (No change.)

(i) (No change.)

(j) [(Reserved)] **Bare soil in excess of 9 square feet per property shall be covered or access to these areas shall be restricted and bare soil in play areas or walkways of any size shall be covered unless that soil has been tested and has been found to be below the lead hazard level established by the U.S. Environmental Protection Agency (40 CFR 745);**

(k) (No change.)